

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MOBILIZATION FUNDING, LLC, a  
South Carolina limited liability company,

Plaintiff,

v.

HALVORSON CONSTRUCTION  
GROUP, LLC, a Washington limited  
liability company; and CEC  
ELECTRICAL CONTRACTING, LLC, a  
Washington limited liability company,

Defendants.

HALVORSON CONSTRUCTION  
GROUP, LLC, a Washington limited  
liability company,

Third Party Plaintiff,

v.

JOHN and JANE DOE CHASE,  
individually  
and the marital community comprised  
thereof,

Third Party Defendants.

NO. 2:18-CV-01412-RAJ

DEFAULT JUDGMENT AGAINST  
DEFENDANT HALVORSON  
CONSTRUCTION GROUP, LLC

## I. INTRODUCTION

This matter comes before the Court on Plaintiff's Motion for Default Judgment. Dkt. # 37. Defendant Halvorson Construction Group, LLC ("Halvorson") has not filed a response. For the reasons below, the Court **DENIES** Plaintiff's motion without prejudice.

## II. BACKGROUND

Plaintiff Mobilization Funding ("Plaintiff") is a South Carolina-based company that provides startup financing to construction subcontractors. Dkt. # 10 at 2. Defendant CEC Electrical Contracting, LLC ("CEC") is an electrical subcontractor that was retained by Defendant Halvorson Construction Group, LLC ("Halvorson") to perform electrical work for three of Halvorson's construction projects (the "Halvorson projects" or "the projects"). Dkt. # 1 at ¶¶ 8-10.

On or about November 16, 2016, Halvorson entered into a lump sum electrical contract with CEC in connection with the construction of an apartment building in Redmond, Washington in the amount of \$3,150,511. *Id.* ¶ 8. On or about February 7, 2017, Halvorson entered into a lump sum electrical construction contract with CEC in connection with the construction of a hotel in Redmond, Washington in the amount of \$3,814,962. *Id.* ¶ 9. On or about April 3, 2017, Halvorson entered into a lump sum electrical construction contract with CEC for the renovation of a senior living facility in Seattle, Washington in the amount of \$1,262,862. *Id.* ¶ 10.

On May 10, 2017, CEC executed a promissory note in favor of Plaintiff in the amount of \$1,904,761.91 ("Note"). *Id.* ¶ 21. CEC also executed a security agreement on the same day ("Security Agreement"), as security for the Note. *Id.* ¶ 22. CEC granted Plaintiff a security interest in all of CEC's inventory, equipment, personal property, and accounts, which included accounts-receivable under CEC's contracts with Halvorson ("Collateral"). *Id.* On October 17, 2017, Plaintiff filed a UCC Financing Statement with the Washington Department of Licensing identifying CEC as the debtor and describing

1 its Collateral. *Id.* ¶ 23. After CEC executed the Note and Security Agreement, Plaintiff  
2 made several advances of funds to CEC in the total amount of \$1,904,761.91. *Id.* ¶ 24.

3 In May 2017, Plaintiff and CEC notified Halvorson that Plaintiff held a security  
4 interest in the accounts receivable under Halvorson's agreements with CEC. *Id.* ¶ 25. On  
5 May 15, 2017, Plaintiff, CEC, and Halvorson executed a document entitled "Directive of  
6 Funds for CEC Electrical Contracting, Inc.," ("Directive of Funds"), in which Halvorson  
7 agreed to pay the accounts receivable directly to Plaintiff on account of its security  
8 interest. *Id.* ¶ 26. In compliance with the Directive of Funds, Halvorson made 18  
9 payments to Plaintiff between June 2017 and April 2018 in the total amount of  
10 \$1,061,003.74. *Id.* ¶ 27.

11 Between March 2018 and June 2018, Halvorson loaned funds to CEC to fund  
12 CEC's operating expenses despite being on notice that Halvorson's receivables were  
13 assigned to Plaintiff. *Id.* ¶ 33. In May through July 2018, CEC submitted applications  
14 for payment to Halvorson ("Disputed Pay Applications"). *Id.* ¶ 34. Instead of paying  
15 Plaintiff the amounts due pursuant to the Disputed Pay Applications, Halvorson retained  
16 the funds and applied proceeds in satisfaction of its own loans to CEC. *Id.* ¶ 35.

17 Plaintiff alleges that Halvorson then attempted to induce Plaintiff to provide  
18 additional funding to CEC and to refrain from taking steps to protect its interests. *Id.* ¶  
19 36. Specifically, Plaintiff claims that Halvorson represented to Plaintiff that the amounts  
20 CEC would be paid on account of its pay applications materially exceeded the amounts  
21 payable to CEC on account of the same pay applications. *Id.* Plaintiff states that  
22 Halvorson represented to Plaintiff that CEC's April 2018 pay applications related to its  
23 projects with Halvorson would total at least \$920,000. *Id.* After accounting for  
24 payments to third parties, this amount would result in a sizable payment to CEC, and in  
25 turn, to Plaintiff, according to Halvorson. *Id.* Halvorson's representations proved false,  
26 however, as the amount actually deemed payable to CEC on account of its April 2018  
27 pay applications was significantly less than \$920,000, and Halvorson did not pay any

1 portion of the amount payable on account of CEC's April 2018 pay applications to  
2 Plaintiff. *Id.* ¶ 37.

3 On or about June 25, 2018, Halvorson terminated CEC on all of the projects for  
4 which CEC had been contracted. *Id.* ¶ 39. As of the of termination date, the unpaid  
5 balance under the contracts was "more than sufficient to cover the costs of the remaining  
6 electrical work to be performed on the projects." *Id.* ¶ 42. Following the termination  
7 date, Halvorson retained control of CEC's personal property used at the locations of the  
8 projects. *Id.* ¶ 44.

9 On September 25, 2018, Plaintiff brought suit against CEC and Halvorson  
10 alleging, among other things, conversion, replevin, and fraud and requesting a declaratory  
11 judgment regarding Plaintiff's priority over CEC's contract receivables. Dkt. #1.  
12 Halvorson was properly served with the complaint on October 1, 2018. Dkt. # 8. Three  
13 weeks later, Halvorson filed an answer, cross claim, and third party complaint against  
14 CEC for breach of contract and fraud. Dkt. # 9. CEC did not file any response despite  
15 being properly served. Dkt. # 22. On August 8, 2019, Plaintiff filed a motion for default  
16 against CEC. *Id.* The Court granted the motion. Dkt. # 25.

17 On August 19, 2019, Halvorson petitioned King County Superior Court for the  
18 appointment of a general receiver. Dkt. # 28 at 2. The petition was granted and a general  
19 receiver ("Receiver") was appointed. *Id.* All of Halvorson's real and personal property  
20 was assigned to the Receiver. *Id.* Based on the appointment of a Receiver and,  
21 effectively, a change in who controls and directs Halvorson's decisions, Halvorson's  
22 counsel moved to withdraw as counsel from this matter. *Id.* at 3.

23 On March 6, 2020, the Court granted Halvorson's counsel's motion to withdraw as  
24 counsel in this matter. Dkt. # 34. However, no substitute counsel had appeared for  
25 Halvorson. *Id.* at 2. Noting that "a corporation may appear in the federal courts only  
26 through licensed counsel," the Court ordered Halvorson to have new counsel enter an  
27 appearance on its behalf by March 20, 2020. *Id.* (citing *Rowland v. California Men's*

1 *Colony*, 506 U.S. 194, 201–02 (1993)). The Court advised Halvorson that if it failed to  
 2 obtain substitute counsel by that date, “the Court may strike the answer and claims of  
 3 Halvorson and enter default.” *Id.*

4 Halvorson failed to have substitute counsel appear on its behalf in this matter by  
 5 the March 20, 2020 deadline or anytime thereafter. Consequently, on August 10, 2020,  
 6 the Court struck Halvorson’s answer and claims and entered default against Halvorson.  
 7 Dkt. # 36. On September 10, 2020, Plaintiff filed the pending motion for default  
 8 judgment against Halvorson. Dkt. # 37.

### 9 III. LEGAL STANDARD

10 At the default judgment stage, a court presumes all well-pleaded factual  
 11 allegations are true, except those related to damages. *TeleVideo Sys., Inc. v. Heidenthal*,  
 12 826 F.2d 915, 917-18 (9th Cir. 1987); *see also Fair House. of Marin v. Combs*, 285 F.3d  
 13 899, 906 (9th Cir. 2002). The entry of default judgment under Rule 55(b) is “an extreme  
 14 measure,” and disfavored cases should be decided on their merits whenever reasonably  
 15 possible. *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002); *also see*  
 16 *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1189 (9th Cir. 2009). Where there  
 17 is evidence establishing a defendant’s liability, a court has discretion, not an obligation,  
 18 to enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *see*  
 19 *also Alan Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988).  
 20 Since deciding for or against default judgment is within a court’s discretion, a  
 21 defendant’s default does not de facto entitle a plaintiff to a court-ordered judgment.  
 22 *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1210-11 (W.D. Wash. 2014).

23 In addition, Federal Rule of Civil Procedure 55(b)(1) permits a court to enter  
 24 default judgment when a plaintiff’s claim “is for a sum certain or a sum that can be made  
 25 certain by computation.” Fed. R. Civ. P. 55(b)(1). In moving a court for default  
 26 judgment, a plaintiff must submit evidence supporting the claims for a particular sum of  
 27 damages. Fed. R. Civ. P. 55(b)(2)(B).

#### IV. DISCUSSION

In deciding a motion for default judgment, a court considers the following factors:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

*Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Weighing all the *Eitel* factors, the Court finds good cause to grant Plaintiff's motion for default judgment.

##### A. Possibility of Prejudice to Plaintiff

Without a judgment, Plaintiff will likely be prejudiced. This factor favors default judgment because if Plaintiff's motion is not granted, it "will likely be without other recourse for recovery." *PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

##### B. Merits of Plaintiff's Substantive Claims and Sufficiency of the Complaint

These two factors are often analyzed together. *Curtis*, 33 F. Supp. 3d at 1211. A court must determine if the allegations in the complaint are sufficient to state a claim that supports the relief sought. *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

The Court finds that these factors weigh in favor of default judgment. Plaintiff's claim is well-pleaded and supported by evidence. Plaintiff submits evidence in the form of executed contracts between the parties, the promissory notes, and pay applications submitted to Halvorson by CEC. Dkt. # 38, Ex. A-B; Dkt. # 39, Ex. A-W.

For a conversion claim, Plaintiff must show that a "person intentionally interfere[d] with chattel belonging to another, either by taking or unlawfully retaining it, thereby depriving the rightful owner of possession." *Alhadeff v. Meridian on Bainbridge Island, LLC*, 220 P.3d 1214, 1223 (Wash. 2009). Plaintiff alleges that it had a prior perfected lien on the Halvorson receivables and that Halvorson knew of this prior

1 interest. *Id.* at 8. Pursuant to the Directive of Funds, Halvorson was required to deliver  
2 the Halvorson receivables to Plaintiff. *Id.* Based on well-pleaded facts, Plaintiff  
3 demonstrates that Halvorson committed conversion by intentionally and unlawfully  
4 retaining the receivables.

5 The Court also finds that Plaintiff's allegations regarding fraud and  
6 misrepresentation against Halvorson are well-pleaded. Plaintiff's factual allegations  
7 support each element of a fraud claim: (1) Halvorson represented to Plaintiff that it  
8 would make a payment; (2) the representation was material; (3) it was also false; (4)  
9 Halvorson knew it was false; (5) Halvorson intended that Plaintiff act on its  
10 representation by not seeking further security on payment; (6) Plaintiff did not know of  
11 the falsity; (7) Plaintiff relied on the truth of the representation and did not take further  
12 steps to secure payment; (8) Plaintiff had a right to rely on it; and (9) Plaintiff suffered  
13 monetary damages as a result. *See Adams v. King Cty.*, 192 P.3d 891, 902 (Wash. 2008).

#### 14 **C. Sum of Money at Stake**

15 The amount of money at stake here is \$911,348.36, plus prejudgment interest.  
16 Because this amount is significant, it would normally weigh against default judgment.  
17 However, given the size and scope of the construction projects and amounts contractually  
18 agreed upon by the parties, this amount is not unreasonable. The Court finds that this  
19 factor is neutral.

#### 20 **D. Possibility of a Dispute Concerning Material Facts**

21 In a prior ruling, the Court denied Plaintiff's motion for partial summary judgment  
22 after finding a dispute concerning material facts. *See* Dkt. # 31. Because Halvorson's  
23 pleadings have been stricken, the Court does not consider the content of Halvorson's  
24 response in consideration of the pending motion. The Court recognizes, however, that its  
25 prior order, at minimum, confirms that there exists a possibility of a dispute of material  
26 facts. This factor therefore weighs against default judgment.

**E. Excusable Neglect**

On the sixth factor, Halvorson’s neglect is inexcusable. Halvorson had been properly served. It failed to obtain substitute counsel as ordered by this Court’s order by the March 20, 2020 deadline, or anytime thereafter. Dkt. # 34. This factor weighs in favor of default judgment.

**F. Decision on the Merits**

Finally, with respect to the seventh factor, “[a]lthough this factor almost always disfavors the entry of default judgment, it is not dispositive.” *Curtis*, 33 F. Supp. 3d 1200 at 1213 (internal quotation marks omitted). Given Halvorson’s inexcusable failure to obtain new counsel and appear, a decision on the merits is impossible. This factor, therefore, weighs in favor of default judgment.

On balance, the Court finds that the *Eitel* factors in favor of default judgment.

**G. Requested Judgment**

“A plaintiff must . . . prove all damages sought in the complaint.” *Dr. JKL Ltd. v. HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1038, 1046 (N.D. Cal. 2010). In determining damages, a court can rely on declarations submitted by a plaintiff. *Dr. JKL Ltd. v. HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1046 (N.D. Cal. 2010).

Plaintiff requests damages in the amount of \$911,348.36. Dkt. # 37 at 10. Plaintiff alleges that this amount is the principal amount left owing under the promissory notes between CEC and Plaintiff. Dkt. # 38 ¶ 4. Plaintiff submitted the two promissory notes executed between CEC and Plaintiff for the amounts of \$1,904,761.91 to be paid by October 30, 2017, and \$908,705.47 to be paid by May 29, 2018. Dkt. # 38, Ex. A-B. Plaintiff indicated that, between June 2017 and April 2018, Halvorson made 18 payments to Plaintiff in the total amount of \$1,061,003.74. Dkt. # 37 ¶ 10. Because the full payment was not submitted by the notes’ respective maturity dates, Plaintiff states that the loans were in default. Dkt. # 38 ¶ 3.

Plaintiff also submits as evidence multiple payment applications to Halvorson



1 regarding amounts owed by Halvorson, as well as documentation of payments received  
 2 by Halvorson from third parties in the construction projects. *See* Dkt. # 39, Ex. A-W. In  
 3 its March 2018 pay applications, CEC sought \$733,301.41 from Halvorson. Dkt. 37 at 6.  
 4 In its April 2018 pay applications, CEC sought \$738,469.37 from Halvorson. *Id.* In  
 5 CEC's May and June 2018 pay applications, CEC requested \$339,743.60 from  
 6 Halvorson. *Id.* Plaintiff asserts that Halvorson paid Plaintiff only \$187,591.75 of the  
 7 receivables from March through June 2018. *Id.*; Dkt. # 38 ¶ 5.

8 Plaintiff fails, however, to provide evidence supporting the calculation of  
 9 \$911,348.36 in damages. Presumably the amount owed to Plaintiff under the notes  
 10 subtracted by the amounts paid by Halvorson would yield the remaining principal balance  
 11 due, but the numbers proffered by Plaintiff do not result in the amount requested. The  
 12 Court thus concludes that Plaintiff's evidence is insufficient to calculate a sum certain.  
 13 Without more, the Court cannot grant the requested damages. *See Geddes v. United Fin.*  
 14 *Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (holding that "[t]he general rule of law is that  
 15 upon default the factual allegations of the complaint, except those relating to the amount  
 16 of damages, will be taken as true.")

## 17 V. CONCLUSION

18 For the reasons stated above, the Plaintiff's Motion for Default Judgment is  
 19 **DENIED without prejudice to refiling.** Plaintiff may file an amended motion within  
 20 **thirty (30) days** of this Order.

21  
 22 Dated this 14th day of September, 2021.

23  
 24  
 25   
 26

27 The Honorable Richard A. Jones  
 28 United States District Judge